

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
ASSOCIATED INDUSTRIES INSURANCE	:	
COMPANY, INC.,	:	
	:	21 Civ. 3624 (LGS)
Plaintiff,	:	
	:	<u>ORDER</u>
-against-	:	
	:	
WACHTEL MISSRY LLP and HOWARD	:	
KLEINHENDLER,	:	
	:	
Defendants.	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, on September 8, 2022, the Court entered an Opinion and Order [dkt. 67], granting the motion for judgment on the pleadings filed by Plaintiff Associated Industries Insurance Company, Inc. (“Associated”) as to Associated’s Third Claim for Relief, subject to certain affirmative defenses raised by Defendants that the Court determined may remain viable, including “statute of limitations, laches, waiver and/or equitable estoppel (Second); Plaintiff’s inequitable or wrongful conduct (Third); unclean hands (Fourth); and subject matter jurisdiction (Eighth)” [see dkt. 67 at 14].

WHEREAS, the September 8, 2022 Order dismissed Associated’s First, Second, Fourth and Fifth Claims for Relief and dismissed Defendants’ Counterclaims as moot.

WHEREAS, the Court directed the parties to file certain letters addressing any remaining affirmative defenses, which the Court then deemed to constitute cross-motions for summary judgment regarding those affirmative defenses [see dkt. 77]; and

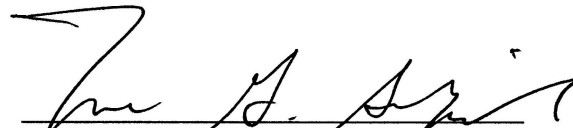
WHEREAS, on December 23, 2022, the Court entered an Order [Dkt. 92] granting Associated’s cross-motion for summary judgment regarding the affirmative defenses, and denying the cross-motion of Defendant Howard Kleinhendler (“Mr. Kleinhendler”). It is hereby

**ORDERED** that, because Mr. Kleinhendler did not raise his Third, Fourth, and/or Eighth Affirmative Defenses on the Parties' cross-motions for summary judgment, Defendant, Howard Kleinhendler's Third, Fourth, and Eighth Affirmative Defenses are **DISMISSED**.

The Clerk of Court is respectfully directed to

1. enter a JUDGMENT in favor of Plaintiff, Associated Industries Insurance Company, and against Defendant, Howard Kleinhendler, on Plaintiff's Third Claim for Relief;
2. enter a JUDGMENT in favor of Plaintiff, Associated Industries Insurance Company, and against Defendant, Howard Kleinhendler, on Mr. Kleinhendler's Second Affirmative Defense and
3. enter a FINAL JUDGMENT in favor of Plaintiff, Associated Industries Insurance Company and against Defendant, Howard Kleinhendler and close the case.

Dated: January 9, 2023  
New York, New York



**LORNA G. SCHOFIELD**  
**UNITED STATES DISTRICT JUDGE**